IN THE HIGH COURT OF JUDICATURE AT PATNA
MA No.112 of 2004
SHEO NATH PRASAD
Versus
MOST.ANITA DEVI & ORS

For Appellant :- Md. Ziauddin, Advocate
Mr. Ajay Kumar, Advocate
For Respondent No. 1 and 3 :- Mr. Mukesh Pd Singh, Advocate
For Respondent No. 7 :- Mr. Prakash Kumar, Advocate
Mrs. Seema, Advocate.

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11. 15.09.08. Appellant Sheo Nath Prasad being owner of Mini Truck bearing Registration No. BR-04A-3432 has preferred this appeal for setting aside the order dated 29th January, 2004 passed by learned Sixth Addl. District Judge-cum-Motor Accident Claims Tribunal, Chapra, in Claim Case No. 93/2000 and award signed on 12. 2. 04 wherein and whereunder the appellant has been directed to pay Rs. 1,40,000/- (one lac forty thousand) by way of compensation to the claimants within two months from the date of passing of the order with 6% interest from the date of filing of the application i.e. 14. 12. 2000.

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Heard learned counsel for the appellant and learned counsel for the respondents.

The claim case was filed by wife, minor daughter and mother of the deceased. Late Sheo Kumar Sah and others were coming to Chapra on 407 Mini Truck bearing registration no. BR-O4A-3432 and a Truck bearing registration no. UP-53L-6618 which was coming from Chapra, dashed against the Tata 407 Mini Truck near the village Hasakari at abut 2.30 P.M. at Chapra-Sonepur road, as a result of which the driver of Tata 407 Mini Truck bearing

Registration No. BR-04A-3432 died on the spot and four persons including the deceased Sheo Kumar Sah who were on the Tata 407 Mini Truck sustained injuries, were brought to Sadar Hospital, but during the course of treatment, Sheo Kumar Sah died.

It has been alleged that the accident took place due to rash and negligent driving of the truck bearing registration no. UP-53L-6618. On the basis of Fard Beyan of Rajbanshi Manjhi, Chaukidar, a Police Case bearing Awatar Nagar P.S. Case No. 92/2000 was registered under Sections 279, 304(A) of the Indian Penal Code against the driver of the truck bearing registration no. UP-53L-6618.

The claimants have further stated that both the trucks i.e. Tata Mini bearing registration no. BR-04A-3432 and UP-53L-6618 were insured by National Insurance Company Ltd. at the time of accident. Respondent Nos 5 and 6 are Branch Mangers of National Insurance Company of Chapra and Gorakhpur respectively.

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The police investigation ultimately culminated in submission of charge sheet against the truck driver of UP-53L-6618.

The claimants have further stated that the deceased Sheo Kumar Sah was a young man who died at a very early age of his life having no male issue. The deceased was earning his livelihood as a Head Mason and he used to earn Rs. 3500/- per month. The petitioner-claimant Anita Devi lost her consortium and claimed Rs. 6,00,000/- (six lac) by way of compensation along with 12 % interest was made.

Learned Tribunal on consideration of evidence, facts and

circumstances, ultimately held that the present appellant being owner of the vehicle of Tata Mini 407 bearing registration no. BR-04A-4332 was responsible for making payment and passed the impugned order.

Contention has been made on behalf of the appellant that, as a matter of fact, it is admitted that the driver of the truck bearing registration no. UP-53L-6618 was driving the vehicle rashly and negligently for which the accident took place. Hence, the Insurer of this vehicle and its owner are liable to pay compensation. The appellant is a third party in this accident. But the learned Tribunal has not considered this fact in right perspective, who has arrived at a conclusion holding the opposite party who is appellant here responsible for making payment merely on the ground that the deceased was travelling as a gratituous passenger of the said Mini Truck 407 BR-04A-3432 and, as such, owner of the aforesaid vehicle is responsible.

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Further submission is that in spite of F.I.R. drawn against the erring driver of the Truck bearing Registration No. UP-53L-6618 and submission of charge sheet, evidence orally as well as documentary have been led against insurer as well as owner of the said heavy truck but they have been absolved from this case.

This liability for making payment by way of compensation has been fastened on the shoulder of the appellant without any material on the record. This liability, in view of facts and circumstances of the case, should have been on the Insurance Company of heavy vehicle having insured of the aforesaid heavy truck

bearing registration no. UP-53L-6618 but it has been left out from making payment of compensation.

Learned counsel for the appellant has referred various petitions including the claim petition wherein the claimant has claimed for making payment of compensation by the owner of hearing truck bearing registration no. UP-53L-6618.

In support of his contention he has referred to order dated 3. 6. 2002, wherein owner and insurer of the aforesaid heavy truck have been held liable to pay ad-interim compensation of Rs. 50,000/- (fifty thousand) to the claimant on the claim petition filed under Section 140 of Motor Vehicle Act. From the order dated 29..1.04, it appears that claim petition has been allowed in part. The owner of the vehicle bearing registration no. BR-04A-3432 owner of light Mini Truck was directed to pay Rs. 1,40,000/- (one lack forty thousand) to the claimants within two months with 6% interest therein from the date of application.

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Learned counsel for the National Insurance Company has submitted that evidence of the informant of the case A.W.I would go to show that he was not confident as to whether the driver of the Truck bearing registration no. UP-53L-6618 was alone responsible for causing death of the claimant Sheo Kumar Sah. Moreover, he has given emphasis on the point that the deceased himself was a gratitious passenger working as Mason and travelling on goods carrier and so the Insurance Company of heavy Truck was not at all responsible to pay compensation.

It has been further argued by thatLearned Tribunal has rightly taken the decision that owner of said Mini Truck bearing

registration no. BR-04A-3432 was responsible for making payment to the claimants.

In the alternative, learned Counsel for the Insurance Company has submitted that even if it is held that driver of the aforesaid heavy truck against whom F.I.R. was lodged, was responsible for driving negligently and rashly causing death of the deceased, the entire liability should not be fastened on the insurer. Rather both the owners of heavy truck and the Mini Truck are responsible for causing death of the deceased Sheo Kumar Sah. The owner of Tata 407 Mini truck bearing registration No. BR-04A-3432 i.e. appellant should not be absolved from discharging his responsibility for making payment by way of compensation.

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In view of the aforesaid facts and circumstances, the impugned order is set aside and the aforesaid case is remitted to the Tribunal so that learned Tribunal should decide whether the deceased, Sheo Kumar Sah died in motor accident due to collusion of vehicles, Tata 407 bearing registration No. BR-04A/3432 and truck bearing registration No. UP-53L-6618 as a bonafide passenger or gratituous passenger and whether the vehicles were insured with the National Insurance Company Ltd. or not. The learned Tribunal should also decide as to whether the claimants are entitled to get compensation for the death of Sheo Kumr Sah in the aforesaid accident. If the claimants are entitled to get compensation, then which of the parties, either insurer or owner of the vehicles, are liable to pay compensation to the claimants.

The learned Tribunal is also directed to dispose of the case within six months from the date of receipt of a copy of this order.

Rs. 25, 000/- which has been deposited by the appellant should be returned to the appellant.

With the aforesaid directions and observation, this appeal is disposed of.

m.p. **(Subash Chandra Jha, J.)**

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